upreme Court, U.S.
FILED

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No.

In THE SUPREME COURT of the UNITED STATES

LOUIS W. THABAULT,

Petitioner-Appellant

v.

ALBERTO R. GONZALES,

Respondent-Appellee

On Petition For Writ Of Certiorari

To The U. S. Court Of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Louis W. Thabault, *pro se*

125 Kennedy Dr. #47

So.Burlington, VT 05403

Tel. (802) 658-3827

Questions Presented for Review

Preface: SubSection (d) of The Wire Communications Act empowers Respondent, the United States Attorney General, to issue letters to common carriers ordering them to cease providing telephone service to illegal sports bookmakers.

Question 1 Does the open and notorious telephone service enjoyed by offshore (foreign) sports bookmakers who offer illegal gambling to United States telephone subscribers constitute a situation so adverse where this Court can compel the Respondent by a writ of mandamus to order the common carriers to cut the telephone connections, as 18 U. S. C. SubSection 1084 (d) so enables Respondent to do?

Question 2 Do the ready connections to offshore bookmaking brought to subscribers' telephones as part of normal phone service make for an illegal intrusion at the Petitioner's residence, and if so does the intrusion make for injury so as to have Petitioner gain standing in this action?

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2) *Allied Chemical Corp. v. Dalton, Inc.*, 449 U.S. 33, 101 S.Ct. 188, 66 L. Ed. 2d 193 (1980), p. 8.

3) *Assoc. of Northwest Steelheaders v. United States Army Corps of Eng'rs*, 485 F. 3d 67, 69 (9th Cir. 1973), p. 8.

4) Burrelle's Transcript, p., 10 CBS News, 60 Minutes, *Any Given Sunday*, Jan. 7, 2001, p. 7.

5) *Carey v. Brown*, 447 U. S. 455, 471 (1980), p. 2.

6) *Cheyenne Sales v. Western Union Fin. Serv. Intern.*, 8 F. Supp. 469, 474 (E. D. Pa. 1998), p.

7) Committee on the Judiciary - DiGregory Statement, p. 6. www.house.gov/judiciary/35033.htm (1998), p. 5.

8) *Gladstone Realtors v, Village of Bellwood*, 441 U. S. 91, 100 (1979), p. 11.

9) *Los Angeles v. Lyons*, 401 U. S. 05, 101 - 192 (1983), p. 11.

TABLE OF AUTHORITIES (cont.)

10) *Mainstream Marketing Services, Inc. v. F. T. C.* 358 F. 3d 1228, 1233 (10th Cir. 2004), p. 10.

11) *Sorrells v. United States*, 287 U. S. 435, 444 (1932), p. 11.

12) *State ex rel. Kucera v. City of Wheeling*, 170 F. 2d 367, 153 W. Va. 538 (1969), pp. 9, 10.

13) The Wire Communications Act, 18 U. S. C. Sec. 1084, pp. (i), 1, 3, 4, 5, 6, 8, 11, Appendix.

14) U. S. Constitution. Art. III, Sec. 2, pp. 2, 3, 4.

15) *U. S. v. Cohen*, 260 F. 3d 68, 75 (2001), *cert. den.*, 536 U..S. 932, 153 L. E. 777. 122 S. C. 2587, p. 5.

16) *U.S. v. Southard*, 700 F. 2d 1, 15 (1st Cir. 1983), p. 7.

17) 18 U.S.C. Sec. 2, pp. 3, 7.

18) 28 U. S. C. Sec. 1651 (a), pp. 3, 9.

19) 47 U.S.C. Sec. 151, pp. 3, 9, Appendix.

Reports on the Action

Petitioner, *pro se*, brought an action in United States District Court, District of Vermont, (J. Garvan Murtha, Judge) on March 18th, 2003, seeking writ of mandamus for the Respondent, the United States Attorney General, to enforce 18 U..S.C. SubSection 1084 (d). The SubSection empowers Respondent to terminate telephone service to illegal, offshore (foreign) gamblers, by issuance of letters of instruction to the common carriers to so terminate. The District Court on May 28, 2003, granted the Respondent's *Motion to Dismiss*, citing absence of a "cognizable injury." (Decision at 2). Petitioner appealed the decision to the United States Court of Appeals, 2d Circuit. Subsequently, on January 14th, 2004, the Court (James L. Oakes, Jose A. Carbranes, Circuit Judges; Michael B. Mukasey, District Judge) affirmed the decision, perceiving no error from the District Court. On February 25, 2004, Petitioner filed for a rehearing. On March 10th, 2005, the Court of Appeals denied the petition for rehearing.

Neither the District Court of Vermont nor the U. S. Court of Appeals for the Second Circuit found Petitioner to have standing. The Second Circuit affirmed the Vermont Court's dismissal, further saying that Petitioner's action was, "... seeking to compel the Attorney General to prosecute telephone companies who provide service to off-shore gambling houses." (Summary Order at 2).

Neither Court published an opinion.

Grounds for Standing

Petitioner claims the availability to illegal bookmaking as part of regular home telephone service makes for a temptation to gamble and to break the law. This availability constitutes an illegal, unwelcome, and continuing intrusion at his home, and as such causes a certain loss of the quiet enjoyment of his residence.

Residential telephone service is indispensable in modern life, and one cannot have telephone service without connection at the key pad ready to illegal bookmaking. This forced availability of an illegal vice at one's home is distinct enough to trigger the reaction for privacy by the Petitioner, and such type claims for privacy at one's home are much favored in United States law. "The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Carey v. Brown*, 447 U. S. 455, 471 (1980).

The fact of Petitioner's having to suffer telephone connection to illegal gambling at his home and the Respondent okaying such by acquiescence constitutes the required controversy for judicial review. *See*, U. S. Constitution. Art. III, Sec. 2.

Constitutional Provisions, Statutes, and Regulations

1) The Wire Communications Act, 18 U. S. C. Sec. 1084 . *See,* Appendix

2) U. S. Constitution. Art. III, Sec. 2. The judicial Power shall extend to all cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority;-to all cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies which the United States shall be a party....

3) 18 U.S.C. Sec. 2. Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

4) 28 U. S. C. Sec. 1651 (a). The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in and of their respective jurisdictions agreeable to the usages and principles of law.

5) 47 U.S.C. Sec. 151. *See,* Appendix

Statement of the Case

Gambling by telephone to offshore (foreign) bookmakers is a significant crime in the United States, involving billions of dollars. Foreign bookmakers operate openly and notoriously in this country using Internet and telephone service. The telephone connections are chiefly through toll-free numbers. Respondent prosecutes American owners, operators, and employees of the offshore bookmaking shops under 18 U. S. C. SubSection 1084 (a). Respondent uses evidence gathered from telephone calls by government agents posing as bettors. The Respondent, however, does not utilize 18 U. S. C. SubSection 1084 (d), which does allow the Respondent, by simple written notification, to order the common carriers supporting telephone bookmaking services to cut the telephone connection to the gamblers.

Petitioner sees no reason for the gambling by telephone to go on. Petitioner has no wish to be forever tempted to join in on sports bookmaking from his residence, and has no wish to be so tempted into joining in on a felony as well. The gambling overall is also a private and public drain on the resources of American citizens.

The written order from the Respondent to the long-distance carriers to cut the offshore gamblers' telephone connection to the United States is what the Petitioner's action demands.

Petitioner is a citizen of the State of Vermont and brought action first at the U. S. District level, and does claim a controversy with the United States and cites the U. S. Constitution, Art. III, Sec. 2, for purposes of jurisdiction.

REASONS FOR GRANTING THE WRIT

International bookmaking over the wires is illegal in the United States. *See*, 18 U. S. C. SubSection 1084 (a). See *also*, *U. S. v. Cohen*, where a U. S. citizen, one Jay Cohen, has his conviction for international bookmaking by telephone and Internet upheld, 260 F. 3d 68, 75 (2001), *cert. den.*, 536 U. S. 932, 153 L. E. 2d 777. 122 S. Ct. 2587,

Mr. Cohen's World Sports Exchange, however, still enjoys telephone service and a toll-free number in the United States, (888) 498-8227 (although houses can and do change numbers).

Respondent can eliminate illegal offshore to United States telephone sports bookmaking by simply issuing a written order to the various common carriers to cease service. See, 18 U. S. C. SubSection 1084 (d), which states in part that upon receipt of any such written order, the common carrier "shall discontinue or refuse, the leasing, the furnishing, or maintaining of such facility...."

Bookmaking by telephone is open and notorious in this country and remains virtually unchecked, regardless of any such convictions of American owners or operators of offshore gambling concerns. United States citizens are apparently the only offshore operators who Respondent indicts, therefore leaving the field wide open to the rest of the world. *See*, Committee on the Judiciary - DiGregory Statement, p. 6. www.house.gov/judiciary/35033.htm (1998), (in which Deputy Asst. Attorney General DiGregory notes that all 21 offshore owners, managers, and employees who had been indicted for on-line and telephone bookmaking were Americans).

With full power to end the open and notorious telephone bookmaking in the United States vested in the Department of Justice, Petitioner seeks Respondent to do just that. The Wire Communications Act does not sit gathering dust at the Department of Justice. The Respondent uses the law for purposes prosecutorial, but has power to use it for much more. Because of these things and because Respondent has jurisdiction throughout the land, and therefore wherever Petitioner might happen to live, it makes the Respondent above all to be a most proper and fitting party in this action.

Further, SubSection 1084 (d) is not prosecutorial in nature. No prosecution is involved, and therefore no escape to that part of the law by Respondent is valid. The power of the unique SubSection (d) is enough to get the job done.

Good from the Writ

The employment of cease service letters would thwart to a degree the criminal sports bookmakers, and likely weaken the flow of everyday hard currency away from the United States to foreign countries which yields no useful product in return.

The United States should also be concerned by the cash the gamblers in the Caribbean and Central America receive after it exits our economy. A steady flow of money will seek a place to be invested, and the illicit drug trade is a likely business in which the underworld of Latin America would invest. With a far greater profit than bookmaking provides, a manyfold increase in wealth is right at hand in the illegal drugs trade. It is more than just likely or probable that gambling profits are sown into drug trafficking, it is a near certainty and therefore it offers

an additional compelling reason for this Court to issue the writ of certiorari to consider a writ of mandamus.

Common Carriers

When a law enforcement agency orders a telephone connection to an illegal bookmaker cut, the common carrier must comply. '"The right and duty of a telephone, telegraph, or other wire service company to refuse service used, or to be used, in furtherance of illegal gambling operations, has been generally recognized,' and is well-established." *Cheyenne Sales v. Western Union Fin. Serv. Intern.*, 8 F. Supp. 469, 474 (E. D. Pa. 1998), *quoting*, A. L. Schwartz, Annotation, *Right or Duty to Refuse Telephone, Telegraph, or Other Wire Services in Aid of Illegal Gambling Operations*, 30 A. L. R. 3d, 1143, 1151-52 (1970 & Supp.1997); ...."

Also, the common carriers are aiders and abettors. "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. " *U.S. V. Southard*, 700 F. 2d 1, 15 (1st Cir. 1983), citing 18 U.S.C. Sec. 2.

The offshore to United States bookmaking enterprise constitutes a significant crime. CBS News in its 60 Minutes episode, *Any Given Sunday*, put the annual revenue of the offshore houses at $10 billion. *See*, Burrelle's Transcripts, p. 10, Jan. 7, 2001. Other sources put it at somewhat less, but a conservative estimate for wagering by telephone from over the years can easily be put in the billions of dollars. A considerable sum for any racket, and no racket for Respondent to overlook.

Sovereign immunity, therefore, does not apply to Respondent in this action because, "when the essence of an appellant's case on the merits requires determination of whether federal officials have exceeded their authority, or have exercised that authority in a void manner, the action falls within the exceptions to sovereign immunity." *Assoc. of Northwest Steelheaders v. United States Army Corps of Eng'rs*, 485 F. 3d 67, 69 (9th Cir. 1973). The Respondent's use of 18 U. S. C. Sec. 1084 as a means of solely prosecuting the few in no way dents the offshore gambling machine, and the Respondent knows it. The Respondent has in effect voided the Act by ignoring the powerful SubSection 1084 (d) and therefore forfeits sovereign immunity in this action.

The result of ignoring 1084 (d) turns around completely the intent of the law. Nevertheless, regardless of the reason why the letters have not been issued, they can be issued. The Respondent just needs someone to provoke things. "Remedy of Mandamus is a drastic one, to be invoked only in extraordinary situations." *Allied Chemical Corp. v. Dalton, Inc.*, 449 U.S. 33, 101 S. Ct. 188, 66 L. Ed. 2d 193 (1980). Illegal international gambling of a grand scale left unfettered is a drastic enough thing for mandamus.

One of the stated purposes of Section 1084, as reported in the U.S. Code Cong. and Admin. News, p. 2631 (1961) is for "prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce." The Department of Justice sought and received the power needed to

close the bookmakers' over the wires openings to the public. Petitioner in this action claims his share of being part of the public.

In 47 U.S.C. Sec.151, in the 1934 creation of the Federal Communications Commission, the Subchapter in part reads that the FCC's purpose includes being, "for the purpose of promoting safety of life and property through the use of wire and radio communications....."

A promotion of safety of life and property is owed to the subscriber as set out in the creating words of the Federal Communications Commission. Prevention of international illegal bookmaking transmissions is the stated purpose of The Wire Communications Act. The Department of Justice also did seek the responsibility for this bit of work in 1961. *See*, U.S. Code Cong. and Admin News, *supra* at 2632, 2633 (where the Attorney General contacts the Speaker of the House by letter to explain and urge passage of The Wire Communications Act).

The gambling by telephone is only greater now.

Mandamus

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in and of their respective jurisdictions agreeable to the usages and principles of law." 28 U. S. C. SubSection 1651 (a). This Court can issue the writ of mandamus with the result being a clerical act, a dutiful act, a necessary and responsible act to be performed by the Respondent.

"A writ of mandamus will not issue unless three elements coexist-- (1) a clear legal right in the petitioner to the relief

sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel and (3) the absence of another adequate remedy." *State ex rel. Kucera v. City of Wheeling*, 170 F. 2d 367, 153 W. Va. 538 (1969). Petitioner claims the right that telephone service offerings under Title 47 U. S. C. are to be of a variety legal (1), and that Respondent has the duty and power to see that the offerings are legal as far as bookmaking goes (2). As for alternative remedy (3), Petitioner is but one person. A letter to the editor is but a vapor. Pleas to any Congressman/woman might get a reply, but action? (Besides, the Wire Communications Act is ample in power granted and in clearness of purpose). An attention gaining device might be of use to shame Respondent into acting, but of what sort and to what effect? These possibilities are much lacking in any certainty. Petitioner, therefore, believes that the action brought to this Court seeking a writ of mandamus for the Respondent to perform an essentially clerical duty is rightly and fittingly brought.

Privacy Right

The continuing temptation to start with the gambling is not totally unlike being repeatedly interrupted at suppertime by telephone solicitors, and dreading those calls. Such solicitation led some of the forever interrupted to propose a national do-not-call-registry. Those people were telephone subscribers who sought a law to keep the solicitors from bothering those people who wished not to be bothered. The subscribers got action and results. "[T]he do-not-call registry targets speech that invades the privacy of the home, a personal sanctuary that

enjoys a unique status in our constitutional jurisprudence." *Mainstream Marketing Services, Inc. v. F. T. C.* 358 F. 3d 1228, 1233 (10th Cir. (2004), (upholding the constitutionality of the registry). May we say in the unlikely event that a telephone subscriber could not get his name placed on the do-not-call-registry, such person would have a good ground in court to secure his rightful spot among the uncalled and unbothered. Petitioner is just asking to be placed by Respondent on the rightful connection-cut list.

Petitioner, like everyone else in modern life, must have a telephone for work, appointments, emergencies, credit, etc. The telephone is a necessity and with the subscription to the telephone comes the connection to illegal bookmaking. As long as Respondent refuses to terminate the gamblers' telephone service, the *de facto* law of this land therefore is that the Petitioner must have access to illegal bookmaking at his residence. This makes no sense.

This intrusion by wire is something real which the Petitioner has to suffer and not an injury '"abstract" or "conjectural" or "hypothetical."' *Gladstone Realtors v, Village of Bellwood,* 441 U. S. 91, 100 (1979), (quoting *Los Angeles v. Lyons*, 401 U. S. 05, 101 - 192 (1983).

Prevention of Crime

Respondent is in the business, among other things of stopping criminal activity and so it rings true that, "[t]he first duties of an officer of the law is to prevent, not to prosecute crime." *Sorrells v. United States*, 287 U. S. 435, 444 (1932).

Such first duties should weigh heavily in this action.

Conclusion

The Respondent has nationwide jurisdiction, and sports bookmaking by international gamblers is a nationwide problem. The issuance of 18 U. S. C. SubSection 1084 (d) letters to all the common carriers subject to the Respondent's jurisdiction to cease service to foreign bookmaking houses operating openly and notoriously would support the U. S. government's substantial interest in prohibiting bookmaking over the wires.

The public's interest would be advanced in the reduction of the loss of everyday currency from this country with nothing useful (and likely harmful drugs) in return.

Further, the letters of cease service would abrogate the *de facto* law of the land that Petitioner must have ready connections to illegal gamblers at the telephone at his home, that place of unique status.

A Writ of Certiorari should be granted.

Respectfully Submitted,

Louis W. Thabault, *pro se*

Date: 5 / 24 / 2005

APPENDIX

Contents

1) Judgment, U. S. District Court, District of Vermont, May 28, 2003.

2) Summary Order, U. S. Court of Appeals, Second Circuit, January 14, 2004

3) Petition for Rehearing denied, March 10, 2005.

4) The Wire Communications Act, 18 U. S. C. Section 1084.

5) 47 U.S.C. Sec. 151.

6) U. S. Code Congressional and Administrative News, pp. 2631-2634 (1961).

UNITED STATES DISTRICT COURT
---- District of Vermont ----

U. S. District Court
District of Vermont
Filed 2003 May 29
P 1:36
Clerk by Deputy Clerk
"s/ C B"

LOUIS W. THABAULT,
Plaintiff

v.

JOHN ASHCROFT,
Attorney General,
Defendant

: JUDGMENT IN A CIVIL
: CASE
:Case No. 1:03-CV-90

_____ Jury Verdict. This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

__x__ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Date. May 29, 2003

Richard Paul Wasko
Clerk

"s/ C Burbank"
(By) Deputy Clerk

Judgment Entered On Docket
Date: 5 / 29 / 03

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

		U, S, District Court
LOUIS W. THABAULT	:	District of Vermont
v.	:	Filed
	:	2003 May 29 A 9 50
JOHN ASHCROFT	:	Clerk
	: No. 1:03-CV-90	By "s/ CB"
	:	Deputy Clerk

RULING ON DEFENDANT'S MOTION TO DISMISS
(Paper 5)

Pro se plaintiff, Louis W. Thabault, has sued, seeking to force the government to enforce 18 U. S. C. 1084 (d). Plaintiff, however, does not allege any injury he suffered as a result of the government's supposed inaction and "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." Linda R. S. v. Richard D., 410 U. S. 614, 619 (1973). To meet the standing requirements of Article III, " [a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright , 468 U. S. 737, 751 (1984).

Plaintiff urges this Court "to abanandon [sic] tradition in the best tradition of equity law, by adopting something new, i. e., backseating of the concrete injury requirement." (Pl's Resp. at 5). The standing requirement of Article III cannot be set aside in the interests of equity but it is a prerequisite to this Court's jurisdiction.

Absent a cognizable injury, Defendant's motion to dismiss is GRANTED.

SO ORDERED

Dated at Brattleboro, in the District of Vermont, this 28th day of May 2003.

"s/ J. Garvan Murtha"
J. Garvan Murtha
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DCVT/BRVT
SUMMARY ORDER 03 CV 90
Murtha

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 14th day of January, Two thousand four.

United States Court of Appeals
Second Circuit
Filed Jan 14 2004
Roseann B. MacKechnie,
Clerk
No. 03-6127

PRESENT:
James L. Oakes
Jose A Cabranes
Circuit Judges
Michael B. Mukasey*
District Judge*

----------x

Louis W. Thabault,
Plaintiff-Appellant

v.

John Aschroft
Defendant-Appellee

*The Honorable Michael B. Mukasey, of the United States District Court for the Southern District of New York, sitting by designation.

[1]

APPEARING FOR APPELLANT: Louis W. Thabault, pro se, South Burlington, VT

APPEARING FOR APPELLEE: Michael P. Drescher, Assistant United States Attorney (Peter W. Hall, United States Attorney, *on the brief*) United States Attorney's Office for the District of Vermont, Burlington, VT

Appealed from a judgment of the United States District Court for the District of Vermont (J. Garvan Murtha, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is hereby AFFIRMED.

Plaintiff Louis Thabault appeals from a judgment of the United States District Court for the District of Vermont (J. Garvan Murtha, *Judge*) dismissing his action against Attorney General John Ashcroft seeking to compel the Attorney General to prosecute telephone companies who provide service to off-shore gambling houses.

The District Court dismissed Thabault's complaint on the ground that Thabault lacked standing to bring his claim. We perceive no error in that decision.

We have considered all of plaintiff's claim on appeal and were hereby AFFIRM the judgment of the District Court substantially for the reasons stated by the Court in its Opinion and Order entered May 3, 2003.

FOR THE COURT,

Roseann B. MacKechnie, Clerk of Court

By "s/ Lucille Carr"

UNITED STATES COURT OF APPEALS
For the Second Circuit
Thurgood Marshall U. S. Court House
40 Foley Square
New York 10007

United States Court of Appeals
Second Circuit
Roseann B. MacKechnie Clerk
Filed
Mar 10 2005

Roseann B. MacKechnie
Clerk

Date:	12/10/04
Docket Number:	03-6127-cv
Short Title:	Thabault v. Ashcroft
DC Docket Number:	03-cv-90
DC:	DISTRICT OF VERMONT (BURLINGTON)
DC Judge:	Honorable J. Murtha

At a stated term in the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of March two thousand five.

Present:

Hon. James L. Oakes
Hon. Jose A. Cabranes
Circuit Judges
Hon.. Michael B. Mukasey*
District Judge

LOUIS W. THABAULT,
Plaintiff-Appellant

v.

JOHN ASHCROFT,
Defendant-Appellee

A petition for panel rehearing having been filed herein by Louis W. Thabault
Upon consideration thereof, it is
Ordered that said petition be and it hereby is DENIED.

For the Court,

Roseann B. MacKechnie, Clerk

By: "s/ Arthur Helle"

THE WIRE COMMUNICATIONS ACT,

18 U. S. C. Section 1084.

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State, where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

18 U. S. C. 1084

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its own jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

47 U.S.C. $151.

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications.....

U. S. CODE CONGRESSIONAL AND
ADMINISTRATIVE NEWS (1961)

SPORTING EVENTS--TRANSMISSION OF BETS,
WAGERS AND RELATED INFORMATION
For text of Act,see p, 552

Senate Report No. 588, July 24, 1961 [To accompany S. 1656]
House Report no, 967, Aug. 17, 1961 [To accompany S. 1656]
The House Report is set out.

House Report No. 967

The Committee on the Judiciary, to whom was referred the bill (S. 1656) to amend chapter 50 of Title 18, United States Code, with respect to the transmission of bets, wagers, and related information, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

PURPOSE OF THE AMENDMENTS

The first amendment is purely technical in order to correct a typographical error.

Amendment No. 2 adds the Commonwealth of Puerto Rico, which is not encompassed by the wording sin subsection (c) since it is neither a State, territory, no possession, in order to insure that it will be included within the scope of that subsection, the purpose of which makes certain that the area encompassed by the bill is not preempted by the Federal Government.

PURPOSE OF THE BILL

The purpose of the bill is to assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are of will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.

BACKGROUND

H. R. 7039 was introduced by the chairman of the Committee on the Judiciary on May 15, 1961, after a communication from the Attorney General dated April 6, 1961. H. R. 7039 is identical to S. 1656 as introduced in the Senate. S. 1656, with amendments, passed the Senate on July 28, 1961, and was referred to the Committee on the Judiciary. Your committee considered S. 1656 as passed by the Senate and, with two amendments, recommends that it do pass.

STATEMENT

Testimony before your Committee on the Judiciary revealed that modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities. For example, at present the immediate receipt of information as to results of a horseracepermits a bettor to place a wager on a successive race.

Likewise, bookmakers are dependent upon telephone service for the placing of bets and for layoff betting on all sporting events. The availability of wire communication facilities affords opportunity for the making of bets or wagers and the exchange of related information almost the very minute that a particular sporting event begins.

This bill does not include within its provisions radio and television stations. The Attorney General, is of the opinion, and the Federal Communications Commission agrees, that the Commission has adequate authority under existing law to prevent the transmission of gambling information over the radio and television facilities. It is evident that this power to act to revoke a station's license when that station is not operated in the public interest (47 U. S. C. 312) is preventing the misuse of these means of communication.

SECTIONAL ANALYSIS

The first section of the bill amends section 1081 of title 18, United States Code, by adding to that section of the chapter on gambling a new definition. The definition is that of "wire communication facility" and as defined is similar to the definition of "wire communication" or "communication by wire" as defined in section 153 of Title 47, United States Code- the Communications Act.

Section 2 of the bill amends chapter 50 of tile 18, United States Code, by adding a new section designated "Section 1084. Transmission of wagering information; penalties"

Subsection (a) of the new section prohibits those persons who are engaged in the business of betting or wagering from knowingly using a wire communication facility for the transmission of bets or wagers or information assisting in the placing of of bets or wagers in interstate or foreign commerce on any sporting event or contest. It also prohibits the transmission of a wire communication which entitled the recipient to receive money or credit as a result of a bet or wager or for information assisting in the placing of bets or wagers. A penalty of $10,000 or imprisonment not more than 2 years, or both, is placed upon such transmission.

Subsection (b) contains an exemption from the prohibitions of subsection (a) for bona fide news reporting of sporting events or contests. A further exemption is contained in subsection (b) which would exempt the transmission of gambling information from a State where the placing of bets and wagers on a sporting event is legal, to a State where betting on that particular event is legal. Phrased differently, the transmission of gambling information on a horserace from a State where betting on that horserace is legal to a State where betting on the same horserace is legal is not within the prohibitions of the bill. Since Nevada is the only State which has legalized offtrack betting, this exemption will only be applicable to it. For example, in New York State parimutuel betting at a racetrack is authorized by State law. Only in Nevada is it lawful to make and accept bets on the race held in the State of New York where parimutuel betting at a racetrack is authorized by law. There-

fore, the exemption will permit the transmission of information assisting in the placing of bets and wagers from New York to Nevada. On the other hand, it is unlawful to make and accept bets in New York State on a race being run in Nevada. Therefore, the transmission of information assisting in the placing of bets and wagers from Nevada to New York would be contrary to the provisions of the bill. Nothing in the exemption, however, will permit the transmission of bets and wagers or money by wire as a result of a bet or wager from or to any State whether betting is legal in that State or not.

Subsection (c) would make certain that the Federal Government is not preempting the area encompassed by the bill. Thus, the right of a State to prosecute for a violation of its penal laws is preserved by this subsection which is a disclaimer of any possible preemption by the Federal Government.

Subsection (d) provides that any common carrier, subject to the jurisdiction of the Federal Communications Commission, which is notified in writing by a Federal, State, or local law enforcement agency acting within its jurisdiction that any facility furnished by the common carrier is being used or will be used for the purpose of transmitting or receiving gambling information which is in violation of Federal, State, or local law shall discontinue or refuse to furnish its wire facility. However, before removal or refusal by the common carrier it must give reasonable notice to the subscriber of the facility. It further provides that the common carrier would be immunized from any damages, penalties, or forfeitures, either civil or criminal, for the acts done in compliance with the notice it received from a law enforcement agency.

This subsection also provides that nothing in this section shall prejudice the right of any person affected by this section to obtain an appropriate determination as otherwise provided by Federal, State, or local law in a Federal or State court or before a local tribunal or agency that the facility should not be removed or discontinued or that it should be restored.

Attached hereto and made a part of this report is a communication from the Attorney General to the Speaker of the House of Representatives dated August, 6, 1961.

Office of the Attorney General
Washington D. C. April 6, 1961

The Speaker
House of Representatives
Washington, D. C.

Dear Mr. Speaker: There is attached for your consideration and appropriate action a legislative proposal to amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

The purpose of the legislation is to assist the various States, territories, and possession of the United States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of or the leasing, furnishing, or maintaining of wire communication facilities which are or will be used for the transmission of certain gambling information in interstate and foreign commerce. Radio and television stations have not been included since we be-

lieve that the Federal Communications Commission has ample authority to control transmission of gambling information by such facilities.

Modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities. For example, at present the immediate receipt of information as to the results of a horserace permits a bettor to place a wager on a succeeding race. Likewise, bookmakers are dependent upon telephone service for the placing of bets and for layoff betting on all sporting events. The availability of wire communication facilities affords opportunity for the making of bets and wagers, and the exchange of related information almost to the very minute that a particular sporting event begins.

The enclosed proposal would prohibit the leasing, furnishing, or maintaining of wire communication facilities, as defined therein, with intent that they be used for the transmission of bets or wagers or information assisting in the placing of bets or wagers, and would prohibit the use of such facilities for the transmission of gambling information. A criminal sanction of $10,000 or imprisonment for not more than 2 years or both is prescribed for violations of the act.

It should be noted that the news broadcasting of sporting events or contests will not be affected by this legislation.

Accordingly, I urge the early introduction and enactment of the legislative proposal.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

Robert F. Kennedy, Attorney General